

Applicants: Kenneth W. Whitley
Serial No.: 10/742,307
Filing Date: December 19, 2003
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REMARKS

Reconsideration of this application is respectfully requested.

Claims 1-8 are in the application. Through this amendment, claim 1 has been amended, and claim 9 has been cancelled.

In the Official Action, the Examiner rejected claims 1, 2, 3, 7 and 9 under 35 U.S.C. §102(b) as being allegedly anticipated by Parker (U.S. Patent No. 3,946,903), or in the alternative, under 35 U.S.C. §103(a) as being unpatentable over Parker in view of Norwood (U.S. Patent No. 5,209,372). The Examiner asserted that "the bottom 21 also have a diameter of the body wall since the diameter of the body in Parker varies similar to that of applicant's" and "[i]n the alternative it would have been obvious to one of ordinary skill in the art to provide the bottom having the same diameter as the body to provide an alternative bottom for the container."

Parker is directed to a collapsible, spirally fluted container. As clearly shown in Figs. 2 and 3, the top and base of the container are formed with smaller diameters than the side wall of the container. The Parker container is intended for dispensing food and other flowable materials. (See, col. 1, ll. 25-28; col. 4, ll. 32-37). There is absolutely no disclosure or suggestion in Parker of using the container as a roller bottle for cell growth culturing.

Amended claim 1 is directed to a "roller bottle for cell growth culturing" which includes a top wall, a bottom wall and a side wall. The "said wall being formed with at least one helical pleat" wherein "said helical pleat includes at least one outer apex". Further, claim 1 states "said bottom wall and said top wall each terminate at a diameter generally equal to a diameter defined by said outer apex." Parker does not disclose or suggest having a top and a bottom terminate at a diameter generally equal to the outer apex of a helical pleat. Rather, as clearly shown in Figs. 1 and 2, the top has a smaller diameter than the outer apex of the helical pleat. Claim 1 states that the helical pleat is located between the top and the bottom. The pleat in the Parker container extends upwardly and into the top within the diameter defined by the outer apex. In any regard, the top and bottom do not define the same diameter in Parker. The claimed invention is a roller bottle which includes a stable base that also provides a portion of the side resting surface, along with the top, for the roller bottle for rolling action during cell growth culturing. Parker has no concern with providing a stable side resting surface for rolling action of the container. It is respectfully submitted that Parker does not disclose or suggest the claimed invention.

With respect to the hypothetical combination of Parker and Norwood, as indicated in Applicant's last response and as set forth at MPEP §2141.01(a), a reference must be analogous art to be usable under 35 U.S.C. §103(a). To be analogous art, only references that relate to the field of an inventor's endeavor or that are reasonably pertinent to the particular problem to which

an inventor is concerned with may be relied upon in formulating a rejection. Parker discloses a collapsible dispenser for food and other flowable products, as set forth above. Norwood discloses use with beverages. (See, e.g., col. 1, ll. 18-22). These applications are clearly far afield from the roller bottle art. In addition, the inventor herein was concerned with efficient flow of fluid along the interior of a roller bottle (see, e.g., para. [0014] of Applicant's specification) and increasing surface area for cell growth (see, e.g., para. [0024] of Applicant's specification). Neither Parker nor Norwood is concerned with these issues. It is noted that the Examiner did not respond to this argument from the last response. With Parker and Norwood being non-analogous art to the claimed invention, it is respectfully submitted that neither Parker nor Norwood is usable in a rejection under 35 U.S.C. §103(a) herein.

Moreover, there is no suggestion to modify Parker to form a container having a top and bottom each with a diameter equal to the outer apex of a helical pleat. As set forth at col. 2, l. 63 – col. 3, l. 6, Parker desires to have “the flute being directed upwardly and inwardly toward the central conduit 5.” With this stated objective, there is no basis to modify Parker to have the top be shaped differently – i.e., there is no basis to modify Parker to avoid having the flute be “directed upwardly and inwardly toward the central conduit 5.” (See, MPEP §2143.01(V) (“If proposed modification would render the prior art invention being modified unsatisfactorily for its intended purpose, then there is no suggestion or motivation to make the proposed

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modification.”)). It is respectfully submitted that, even assuming *arguendo* that Parker and Norwood are analogous art, there is no basis to modify Parker, and claims 1, 2, 3 and 7 are patentable over Parker and Norwood, each taken alone or in combination.

In the Official Action, the Examiner rejected claim 9 under 35 U.S.C. §102(b) as being allegedly anticipated by Norwood. Claim 9 has been cancelled herein and, thus, this rejection has been rendered moot.

Claims 1, 2, 3, 5, 7 and 9 were rejected under 35 U.S.C. §102(b) as being allegedly anticipated by JP 2001-335036 (“JP ‘036”).

JP ‘036 discloses a bottle which includes a top wall and a bottom wall each having a smaller diameter than the outer diameter of a helical pleat located therebetween.

As set forth above, claim 1 includes the limitation of “said bottom wall and said top wall each terminate at a diameter generally equal to a diameter defined by said outer apex.” There is no disclosure or suggestion of this structure in JP ‘036. It is respectfully submitted that claims 1, 2, 3, 5 and 7 are patentable over JP ‘036.

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The Examiner rejected claims 4, 6 and 8 under 35 U.S.C. §103(a) as being allegedly unpatentable over Parker or JP '036.

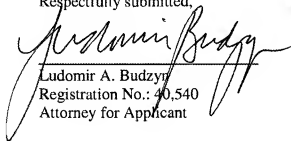
Further to the arguments set forth above with respect to Parker and Norwood, it is also respectfully submitted that JP '036 is not analogous art to the claimed invention. There is no disclosure or suggestion of using the bottle set forth in JP '036 as a roller bottle for cell culturing. As such, it is respectfully submitted that neither Parker nor JP '036 can be used in a rejection based on 35 U.S.C. §103.

In addition, claims 4, 6 and 8 all depend from claim 1. As indicated above, it is respectfully submitted that claim 1 is patentable over Parker and JP '036. As depending from an allowable claim, it is respectfully submitted that claims 4, 6 and 8 are also patentable over Parker and JP '036.

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Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicant's attorney at the number listed below.

Respectfully submitted,



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